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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,027	07/03/2003	Mark A. Trillo	1008	5833

7590 12/18/2003

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137 South Main Street  
Akron, OH 44308

EXAMINER
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ROWAN, KURT C

ART UNIT	PAPER NUMBER
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3643

DATE MAILED: 12/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No. 10/612,027	Applicant(s) TRILLO, MARK A.	
	Examiner Kurt Rowan	Art Unit 3643	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL.      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 6) ☐ Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

1. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In line 9, "...and egress to and attachment means..." is confusing. In line 10, "...and egress to tail..." is confusing. Has a word been omitted? In claim 1, it is not clear what the first orifice is providing ingress and egress to? The same applies to the second orifice. In reference to claim 2, it is not possible to determine the scope of the claim since it not clear what "having a variety of aesthetic effects" and "other suitable surface features" includes. In reference to claim 3, line 12, "...that clockwise rotation of shaft..." also appears to have a word omitted.

Please check all the claims for similar errors.

3. Claim 1 recites the limitation "the interior" in line 11. There is insufficient antecedent basis for this limitation in the claim.
4. Claim 1 recites the limitation "the electrical circuitry and illumination source (LED)" in line 13. There is insufficient antecedent basis for this limitation in the claim.
5. Claim 3 recites the limitation "the return spring" in line 9. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flournoy in view of Kalagian.

The patents to Flournoy and Kalagian show fishing lures. Flournoy shows a rigid housing 6 forming an elongated body 8-9. Flournoy shows a first orifice 18 and a second orifice (not labeled but for eye 41). Flournoy shows the orifices aligned along the longitudinal lure axis. The orifices provide ingress and egress for removable attachment and detachment. Flournoy shows the interior of the lure as being substantially hollow to accommodate electrical circuitry such as battery 39 and a light source 17. Flournoy shows attachment means 22. In reference to claim 1, Flournoy shows a light source as a pen light bulb, but does not disclose the bulb as a light emitting diode. The patent to Kalagian shows a fishing lure with a light emitting diode (LED) 18. In reference to claim 1, it would have been obvious to provide Flournoy with an LED as shown by Kalagian since merely one light bulb is being exchanged for another and the function is the same.

8. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Flournoy in view of Kalagian as applied to claim 1 above, and further in view of Guerri.

The patents to Flournoy, Kalagian, and Guerri show fishing lures. Flournoy shows a castable lure body since it is made from Bakelite. Guerri also shows a lure made from plastic which is castable and having an exterior surface with eyes, gills scales, fins. Flournoy and Kalagian have been discussed above and do not show the exterior surface of the lure having a variety of aesthetic effects such as eyes, mouth, and gills. In reference to claim 2, it would have been obvious to provide the lure of Flournoy as modified by Kalagian with a variety of aesthetic effects as shown by Guerri in Fig.1 to provide a more natural looking lure.

***Allowable Subject Matter***

9. Claims 3-5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

***Conclusion***

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The patents to Ratcliffe, Fima, Day, Godby, and Zimmermann show other fishing lures.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Rowan whose telephone number is 703 308-2321. The examiner can normally be reached on Monday-Thursday 6:30-5:00.

The fax phone number for the organization where this application or proceeding is assigned is 703 872-9306.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1113.

A handwritten signature in black ink that reads "Kurt Rowan". The signature is fluid and cursive, with a long horizontal stroke at the end.

Kurt Rowan  
Primary Examiner  
Art Unit 3643

KR